

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No.403 of 2004

Between:

1. D.Narayana Rao, S/o.Chinnabai,
R/o.59-2-3, Ashoknagar, Vijayawada.
2. Smt.D.Sujatha Devi, W/o. D.Narayana Rao,
R/o Flat No.417, D.No.12-11-1549, Boudhanagar,

Varasiguda, Secunderabad-500 061.

..... PETITIONERS

AND

1. A.P. State Financial Corporation, Ranga Reddy (East) Branch,

rep. by its Assistant General Manager,
Chirag Ali Lane, Hyderabad.

2. M/s.Sri Sai Lakshmi Bottling Pvt.Ltd.,

rep. by its Director Sri D.Hanuman Prasad, Plot No.77,
12-7-112/3/1, Keshav Nagar Colony, New Mettuguda,

Secunderabad-500 017.

3. G.Hareesha, D/o. G.V.Rammohan Rao,

R/o. Flat No.402, Preeti Apartments, A-3,

Madhuranagar, Near Saradhi
Studios, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more in the nature of Mandamus declaring the action of the 1st respondent in effecting sale of the collateral security property belonging to the petitioners bearing H.No.59-2-3, Ashok Nagar, Vijayawada under Section 29 of the SFC Act by issuing paper advertisement, on 2-9-2003 and the consequential sale in favour of the 3rd respondent for an amount of Rs.25.20 lakhs as illegal, arbitrary, violative of principles of natural justice and contrary to the established norms intended to be followed by the APSFC, offending Art.14 and 21 of the Constitution of India and consequentially to direct the 1st respondent to give an opportunity to the petitioners herein to pay the loan outstanding.

Counsel for the Petitioners : Mr.M.SUDHIR KUMAR

Counsel for Respondent No.1: Mr.Y.N.LOHITA

Counsel for Respondent No.2: None appeared.

Counsel for Respondent No.3: Mrs. G.JHANSI

The Court made the following :

ORAL ORDER: (per Hon'ble Sri Bilal Nazki, the Acting Chief Justice)

Heard the learned counsel for the parties. The matter is taken up on a reference made by a learned single Judge of this Court. Though the learned single Judge has not referred any question to this Court, he thought it appropriate to place the matter before an appropriate Bench (having regard to the importance of the question involved).

The writ petition was filed challenging the notices dated 2-9-2003 and 17-12-2003 requiring the petitioners to hand over the property to first respondent – A.P. State Financial Corporation. By notice dated 2-9-2003, it was notified that the property which belongs to the petitioners shall be sold, and by letter dated 17-12-2003, the petitioners were asked to hand over possession of the property.

The facts are not in dispute. The admitted facts are that second respondent industrial unit secured loan from the State Financial Corporation and it did not pay back and became a defaulter. The writ petitioners stood as third party guarantors for securing the loan. As on today, it is submitted that the property of the industrial unit to which the loan was advanced stands sold in pursuance of the proceedings under Section 29 of the State Financial Corporations Act, 1951 (for short 'the Act'), and according to the respondents, even after selling the unit, the Corporation has not fetched the money that was outstanding against the unit.

Learned Senior Counsel appearing for the petitioners argued at length on the premise that Section 29 of the Act was not available to the respondent Corporation to sell away the property which was offered as collateral security. It may not be necessary to refer to the submissions made by the learned Senior Counsel in view of the fact that what the petitioners executed with the Corporation was, as a matter of fact, a memorandum which states that the title deeds with respect to the house in question would be deposited with the respondent Corporation by way of mortgage. In terms of Section 29 of the Act, any property mortgaged can be sold by the Corporation without taking recourse to either Section 31 or Section 32 of the Act, which is settled law. Since, admittedly, the property of the petitioners stood mortgaged to the respondent Corporation by way of collateral security on behalf of the loanee, we do not find fault with the respondent Corporation in pursuing the remedy available to it under Section 29 of the Act.

The reference stands answered in view of our discussion hereinabove. The writ petition is devoid of merits and is accordingly dismissed.

(BILAL NAZKI, ACJ)

21st June 2005.

(G.CHANDRAIAH, J.)

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To

1. The Assistant General Manager,
A.P. State Financial Corporation, Ranga Reddy (East) Branch,
Chirag Ali Lane, Hyderabad.
2. Two CD copies.
3. The Director, M/s.Sri Sai Lakshmi Bottling Pvt. Ltd., Plot No.77,

12-7-112/3/1, Keshavnagar Colony, New Mettuguda, Secunderabad-500 017.